



## State of Missouri

### DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Matthew F. McWilliams,

Applicant.

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Case No. 100401414C

### REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On July 16, 2010, Mary S. Erickson, Senior Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Matthew F. McWilliams. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and summary order:

### FINDINGS OF FACT

1. Matthew F. McWilliams ("McWilliams") is an individual residing in Missouri, whose mailing address of record is 4059 Springfield Road, Bourbon, Missouri, 65441.

2. On February 16, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a Uniform Application for Individual Insurance Producer License from McWilliams ("Application").

3. In the section of the Application entitled "Background Information," Question No. 1 asks:

Have you ever been convicted of a crime, had judgment withheld or deferred, or are you currently charged with committing a crime? 'Crime includes' a misdemeanor, felony or a military offense. . . . 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

4. McWilliams answered "Yes" to Background Question No. 1.

5. As part of his Application, McWilliams disclosed a January 26, 2007 felony conviction in the United States District Court, Eastern District of Missouri. McWilliams pleaded guilty to violating 18 U.S.C. 2252A(a)(5)(B), for knowingly possessing material that contains an image of child pornography that was produced using materials that traveled in interstate

commerce. *U.S. v. McWilliams*, E.D. Mo., No. 4:06CR244RWS.

6. According to Background Question No. 1,

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a certified copy of the charging document,
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

7. McWilliams provided with his Application a certified copy of the Judgment in *U.S. v. McWilliams*, E.D. Mo., No. 4:06CR244RWS. McWilliams was sentenced to 40 months in federal prison, supervision for life upon release from prison, with conditions, and a criminal fine of \$12,500.00. McWilliams did not provide a certified copy of the charging document.

8. According to the Indictment in *U.S. v. McWilliams*, E.D. Mo., No. 4:06CR244RWS, McWilliams was charged with one count of violating 18 U.S.C. 2252A(a)(5)(B), by knowingly possessing child pornography that was produced using materials that traveled in interstate commerce, "including but not limited to" the following images:

- 1) Minor female nude, lying on her back and displaying her genital area in a lascivious manner;
- 2) Minor female performing oral sex on a male;
- 3) Two minor females, one displaying her genital area in a lascivious manner while the other performs oral sex on her;
- 4) Minor female lying on her back in a baby crib displaying her genital area in a lascivious manner;
- 5) Adult male anally penetrating a minor male.

9. In his "Resident License Letter of Explanation", McWilliams explained:

There were no victims involved with the case. . . . My charge was for possession of an item (1) that contained child pornography. . . .

I accepted responsibility for my poor judgment immediately with the authorities. I was given a short sentence and fine. . . .

I hope that for my license I will be judged by my lifetime of work rather than for 20 minutes of bad judgment.

10. McWilliams failed to reveal in his Letter of Explanation or provide certified copies the 1986 class C felony of sexual assault in the first degree (sixteen year old female) to which he pleaded guilty in the Circuit Court of Dent County, Missouri. McWilliams received a suspended imposition of sentence for the felony and probation.

11. As a result of the 1986 felony, McWilliams was required to register with the Missouri State Highway Patrol Sex Offender Registry.

12. McWilliams is currently compliant with the Sex Offender Registry.

### CONCLUSIONS OF LAW

13. Section 375.141.1 RSMo (Supp. 2009)<sup>1</sup> provides, in relevant part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

\* \* \*

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

\* \* \*

(6) Having been convicted of a felony or crime involving moral turpitude[.]

14. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

15. The principal purpose of § 375.141 is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

16. McWilliams may be refused an insurance producer license pursuant to § 375.141.1(6) because he was convicted of the felony knowingly possessing child pornography that was produced using materials that traveled in interstate commerce in *U.S. v. McWilliams*, E.D. Mo., No. 4:06CR244RWS.

17. McWilliams may be refused an insurance producer license pursuant to § 375.141.1(6) because the criminal offense itself and the factual circumstances of his offense of possessing child pornography necessarily involve moral turpitude where the crime is "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general." *Frick*, 694 S.W.2d at 479.

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<sup>1</sup> All statutory references are to RSMo (Supp. 2009) unless otherwise indicated.

Under Missouri's historical standards of decency and good morals, we conclude that the crime of possession of child pornography necessarily involves an act of vileness and depravity. Children are among the most vulnerable in our society, and adults who possess child pornography are contributing to the exploitation of the children depicted in the pornography. Child pornography is base, vile, and depraved, and in contravention of the basic and social duties and customs owed to others and our society, irrespective of whether the depicted children live within our borders or abroad. Child pornography also inflicts harm not only upon those children depicted in the pornography, but upon children in general. The conduct necessarily involved in child pornography violates federal law, but it also violates Missouri's traditional standards of common decency and good morals. We conclude that the criminal offense of possession of child pornography is a Category 1 crime involving moral turpitude.

*Department of Health & Senior Servs. v. Inman*, No. 07-1552 DH (Mo. Admin. Hrg. Comm'n Dec. 8, 2008), relying on *Brehe v. Missouri Dep't. of Elementary & Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. 2007).

18. McWilliams may also be refused an insurance producer license pursuant to § 375.141.1(6) because the class C felony of sexual assault necessarily involves moral turpitude. *Missouri Dental Bd. v. Rice*, No. 01-0424 DB (Mo. Admin. Hrg. Comm'n June 18, 2002).

19. McWilliams may also be refused an insurance producer license pursuant to § 375.141.1(1) by intentionally providing materially incorrect, misleading, incomplete or untrue information, where he failed to reveal or provide the required documentation regarding his 1986 felony for sexual assault. McWilliams also failed to provide a certified copy of the Indictment in his federal felony for possessing child pornography which contained a description of the pornography McWilliams was charged with possessing.

20. McWilliams' failure to indicate his 1986 felony charge and guilty plea for first degree sexual assault demonstrates that McWilliams is attempting to obtain a license through material misrepresentation or fraud which is grounds for refusal under § 375.141.1(3).

21. Having a criminal conviction, by guilty plea, is a memorable event not likely to be forgotten; the most likely explanation for McWilliams' failure to disclose his 1986 sexual assault felony in his application is that he intentionally failed to disclose the event in order to improve his chances of succeeding with his application.

22. Similarly, it is likely he failed to provide the Department with a certified copy of his Indictment for possession of child pornography because the description and details are contrary to McWilliams' Letter of Explanation where he states: "[t]here were no victims" and the "charge was for possession of an item (1) that contained child pornography." McWilliams likely intended to withhold the details in the hopes of improving his chances of success on his application.

23. The Director has considered McWilliams' history and all of the circumstances surrounding McWilliams' application. McWilliams has a felony conviction of possession of

child pornography. That conviction and his guilty plea to the 1986 sexual assault are crimes of moral turpitude. Also, the facts reveal that granting a license is not in the public interest where McWilliams stated in his Letter of Explanation that he hopes his license "will be judged by my lifetime of work rather than for 20 minutes of bad judgment" and in his lifetime, he has been charged with and pleaded guilty to two sexually-related offenses involving minors. As an insurance producer, McWilliams may meet with consumers in their homes or become acquainted with their families, thus placing McWilliams in a position of having contact with children and to potentially gain their trust.

24. This Order is in the public interest.

**ORDER**

**IT IS THEREFORE ORDERED** that the insurance producer license of MATTHEW F. McWILLIAMS is hereby summarily **REFUSED**.

**SO ORDERED.**

WITNESS MY HAND THIS 20<sup>th</sup> DAY OF JULY, 2010.

  
JOHN M. HUFF  
DIRECTOR

**NOTICE**

**TO: Applicant and any unnamed persons aggrieved by this Order:**

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of July, 2010, a copy of the foregoing Notice and Order was served upon the Applicant Matthew F. McWilliams in this matter by certified mail No. 7007 0710 0002 2055 2350 at

Matthew F. McWilliams  
4059 Springfield Road  
Bourbon, MO 65441

Kathryn Randolph